

VZCZCXYZ0001
PP RUEHWEB

DE RUEHLP #2626/01 3572141
ZNY CCCCC ZZH
P 222141Z DEC 08
FM AMEMBASSY LA PAZ
TO RUEHC/SECSTATE WASHDC PRIORITY 9563
INFO RUEHAC/AMEMBASSY ASUNCION 8682
RUEHBO/AMEMBASSY BOGOTA 6042
RUEHBR/AMEMBASSY BRASILIA 0005
RUEHBU/AMEMBASSY BUENOS AIRES 7225
RUEHCV/AMEMBASSY CARACAS 4273
RUEHCP/AMEMBASSY COPENHAGEN 0290
RUEHPE/AMEMBASSY LIMA 4606
RUEHMN/AMEMBASSY MONTEVIDEO 6036
RUEHQT/AMEMBASSY QUITO 6887
RUEHSG/AMEMBASSY SANTIAGO 1667
RUEHUB/USINT HAVANA 1567
RHEHNSC/NSC WASHINGTON DC
RHMFISS/HQ USSOUTHCOM MIAMI FL
RUEAIIA/CIA WASHINGTON DC
RUEKJCS/SECDEF WASHINGTON DC
RHEFDIA/DIA WASHINGTON DC

C O N F I D E N T I A L LA PAZ 002626

SIPDIS

E.O. 12958: DECL: 10/30/2018
TAGS: [PGOV](#) [KDEM](#) [PREL](#) [PHUM](#) [BL](#) [PINR](#)
SUBJECT: BOLIVIA'S JUDICIAL SHOWDOWN: MAS WINS AGAIN

Classified By: Acting EcoPol Chief Brian Quigley for reasons
1.4 (b, d)

¶1. (C) Summary: Bolivia's ruling Movement Toward Socialism (MAS) party scored a double victory over the opposition in a Congressional showdown over new judicial appointments on December 20. It revitalized the National Electoral Court (NEC), which it needs to execute and sanction the results of its January 25 constitutional referendum, and kept the Constitutional Tribunal essentially defunct, ensuring no judicial oversight over the executive branch's actions. With the expiration of Court Vice-President Jeronimo Pinheiro's term on December 16, the NEC was down to only two members (out of its normal five). Without a new member the NEC would have been unable to form a quorum and therefore unable to validate the referendum results. To solve the problem, the MAS first tried to illegally extend Pinheiro's term in office, which was narrowly blocked by the Senate opposition. In response, the MAS cannily offered a vote in the full Congress to add up to three new members of the NEC, ten new members of the Tribunal, a new Supreme Court justice, and a new attorney general (equivalent). In the end only one NEC candidate, Antonio Costas, received enough votes. By offering the vote, the MAS got exactly what it needed to keep its constitution on track while appearing to champion democracy. Although Vice President Alvaro Garcia Linera is publicly stating his desire to appoint new justices to the Constitutional Tribunal before the referendum, time is short and the appointments unlikely. End Summary.

- - - - -
MAS Outfoxes Opposition
- - - - -

¶2. (SBU) With the fate of the upcoming January 25, 2009 constitutional referendum in the balance, Bolivia's Congress arrived at a showdown on December 21 over the composition of the Bolivian National Electoral Court (NEC). NEC Vice-President Jeronimo Pinheiro's term expired on December 16, leaving the five-member court with two members. The opposition-controlled Senate had blocked replacements proposed by the MAS, demanding more moderate candidates. As the referendum cannot be executed or validated by the NEC without a quorum of three judges, pressure was on the MAS to compromise to propose a new, moderate judge whose nomination

could make it out of the Senate.

¶3. (SBU) Instead, on December 17, the MAS proposed a law to extend by one year the terms of both Pinheiro and fellow justice Amalia Oporto. The opposition narrowly voted it down in the Senate despite the defection of two opposition Senators.

¶4. (C) Ex-NEC President Salvador Romero confirmed to Poloff that the MAS proposal was "clearly illegal." He explained that Bolivian law allows for a four-year appointment to the NEC but any concept of partial-term extensions "simply does not exist." Judges may be re-appointed, but they must go through the same approval process each time. According to Romero, even if the Congress amended the law to allow for extensions, they could not have applied it to Pinheiro because his term was already over. Although an obviously illegal measure, with the Constitutional Tribunal unable to rule against it, the law would have solved the MAS' problem.

¶5. (C) After the vote, PODEMOS Senate Leader Oscar Ortiz announced that no new NEC candidates would be approved by the Senate until names were also submitted for the Constitutional Tribunal and other judicial institutions. (Note: The nominally ten-member Constitutional Tribunal has shrunk under MAS pressure to only one, leaving it without a three-member quorum for over a year. End note.) Vice-President Alvaro Garcia Linera met with sole Tribunal member Silvia Salame on December 18, where he signaled a willingness to consider multiple judicial appointments.

¶6. (C) Garcia Linera convoked the Congress on December 19 to reach a deal, but without success. On Saturday, December 20, in an unusual Saturday session, the MAS switched tactics, cannily offering a vote in the full Congress to add up to three new members of the NEC, ten new members of the Tribunal, a new Supreme Court justice, and a new attorney general (equivalent), but in the end only Antonio Costas, a candidate for the NEC, received enough votes. By offering the vote, the MAS outfoxed the opposition, got exactly what it needed to keep its constitution on track for approval, and appeared as champions of democracy, all while offering its regrets that none of the candidates for the other judicial institutions were selected.

- - - - -
Tribunal Still on Life Support
- - - - -

¶7. (C) Although Vice President Alvaro Garcia Linera is publicly stating that he wants to appoint new justices to the Constitutional Tribunal before the January referendum, barely a month remains and the appointments seem unlikely to happen. Garcia Linera has warned that if the new Tribunal members are not appointed by January 25, there will be no new appointments until after planned December 2009 elections. Garcia Linera seems to be betting he can either extract MAS-approved candidates, or, failing that, keep the Constitutional Tribunal hobbled. Many opposition leaders believe the latter is exactly what is going to happen. In an interview with leading daily La Razon, opposition Senator Fernando Rodriguez (PODEMOS party) said in response to Garcia Linera's comments that "in 2009 the country will drift, without institutions such as the Constitutional Tribunal. There will only be an autocracy that will dictate who will be the judicial authority." PODEMOS Deputy Lourdes Millares added that "the MAS wants to put into effect a constitution that is not subject to the control and regulation of the Tribunal."

¶8. (SBU) Similarly, Salame said that during her December 18 meeting, she asked Garcia Linera for his "transition plan," but heard nothing. Salame has threatened to resign if the proposed constitution is approved without new Tribunal members being appointed beforehand. She has publicly added that with the approval of the new constitution the Tribunal would not be able to make any decisions, because the constitutional change will put all existing law in stasis

until new legislation is passed that implements the constitution.

¶9. (C) According to opposition strategist Javier Flores, Senate leaders are afraid if they do not get new Constitutional Tribunal appointments before the referendum, they will not get them for two years. Under the new constitution, they feel a year's worth of implementing legislation will have to be worked out before new Tribunal appointments can be made and the MAS will not start this process until after the December 2009 elections. Also, under the new constitution, two out of five principal Tribunal positions have to be indigenous (read: sympathetic to the MAS).

- - - -
Comment
- - - -

¶10. (C) With its legislative victory, the MAS has escaped and kept its constitutional referendum alive, but the underlying theme is still one of legality being secondary to accomplishing their agenda. In this case, the ultimate solution was legal, but the MAS was initially prepared to pass an illegal measure to ensure its referendum was not jeopardized. The administration is not alone in its tendencies to discard the law when it finds it an impediment to reaching its goals. The opposition resorted to tactics of questionable legality in its "extralegal" April and May autonomy referenda. Until the Constitutional Tribunal is reconstituted and able to act as a brake on both the regional and national governments, neither the administration nor the opposition can be counted on to act as agents of legal change.
LAMBERT